

FILED - KZ

November 20, 2024 2:28 PM

U.S. DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

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S.I.R.P.P

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BURTON M. KOSS,

:

Plaintiff,

:

v.

:

Case No. \_\_\_\_\_

AMBER BERRY, ELY SHAPIRO,

:

CASEY ASHBY &amp; PARAGON HEALTH, P.C.,

:

Jury demand endorsed herein.

Defendants.

:

1:24-cv-1240

Hala Y. Jarbou  
U.S. District JudgeCOMPLAINT

1. This complaint alleges violation of Plaintiff's civil rights under 45 CFR § 164.530 (g) (1), commonly referred to as the HIPAA Privacy Rule, and the intentional infliction of emotional distress upon Plaintiff in connection with such violation. The Court has subject matter jurisdiction of this case under 28 USC § 1331.

2. Plaintiff is an individual resident of St. Joseph County, Michigan.

3. Defendants Amber Berry, Ely Shapiro, and Casey Ashby are physicians licensed to practice medicine in the State of Michigan who regularly and routinely practice medicine in Kalamazoo County, Michigan.

4. Defendants Berry, Shapiro and Ashby are officers, directors, and shareholders of Paragon Health, P.C.

5. Defendant Paragon Health, P.C. is a Michigan professional corporation that regularly and routinely conducts business in Kalamazoo County, Michigan. Paragon Health, P.C. operates six different medical specialty practices in southwest Michigan.

6. All events relevant to this complaint occurred within the geographical boundaries of the Southern Division of the United States District Court for the Western District of Michigan.

**STATEMENT OF FACTS**

7. On January 5, 2022, Plaintiff was treated by Dr. Amber Berry at Adult & Pediatric Ear Nose, & Throat Services (“APENT”), a facility located in Kalamazoo, Michigan, and operated by Paragon Health, P.C. (“Paragon”).

8. On January 6, 2022, Plaintiff directed a written complaint to Laura Mrozinski, an administrator at Paragon, in which Plaintiff alleged that Dr. Berry, Dr. Ashby, and Paragon had violated Plaintiff’s rights under 45 CFR § 164.520.

9. On January 12, 2022, Plaintiff received a letter from Dr. Ely Shapiro. The letter identified Dr. Shapiro as the senior practice director of APENT.

10. Dr. Shapiro’s letter to Plaintiff stated that APENT would no longer provide care, treatment or services to Plaintiff.

11. On January 12, 2022, Plaintiff also received a letter from Brian Whitelaw, in which Mr. Whitelaw identified himself as counsel for APENT and Paragon. Mr. Whitelaw’s letter to Plaintiff stated that Plaintiff is not permitted to “contact any member of Adult & Pediatric Ear, Nose & Throat or Paragon Health by phone, by email or by any other means,” thereby barring Plaintiff from seeking care, treatment or services from any health care provider who is a member of Paragon, and from any facility operated by Paragon.

**FIRST CAUSE OF ACTION:**  
**VIOLATION OF 45 CFR § 164.530 (g) (1)**

12. Defendants’ denial of care, treatment and services to Plaintiff is an act of discrimination and retaliation, and constitutes a violation of 45 CFR § 164.530 (g) (1). Defendants’ unlawful

conduct is an ongoing and continuous violation of Plaintiff's civil rights. To this day, Plaintiff remains unable to obtain care, treatment and services from Defendants.

**SECOND CAUSE OF ACTION:**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

13. As a direct and proximate result of Defendants' unlawful denial of care, treatment and services to Plaintiff, Plaintiff has suffered, and continues to suffer, significant emotional distress and psychological harm.

14. Defendant's conduct in this matter is willful and wanton. Defendants know or should know that their conduct is likely to cause such harm to Plaintiff.

**PRAYER FOR RELIEF**

A. Plaintiff seeks injunctive relief, in the form of an order prohibiting Defendants from any further retaliatory or discriminatory conduct, and requiring Defendants to provide care, treatment and services to Plaintiff.

B. Plaintiff seeks an award of compensatory and punitive damages, in an amount to be determined by the trier of fact, and an award of court costs and attorney fees incurred by Plaintiff.

**JURY DEMAND**

Plaintiff demands trial by jury on all issues so triable under applicable state and federal law.

Respectfully submitted,

  
/s/ Burton M. Koss

Burton M. Koss

*Plaintiff*

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